

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 23700 of 2006(U)

PETITIONER:

SHEEBU M,
H.S.A. (SOCIAL STUDIES),MUNICIPAL HIGHER SECONDARY
SCHOOL, KANDANGALI, PAYYANNUR, KANNUR DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF HIGHER SECONDARY
EDUCATION, THIRUVANANTHAPURAM.
3. THE SECRETARY,
PAYYANNUR MUNICIPALITY (AS THE MANAGER OF
KANDANGALI MUNICIPAL HIGHER SECONDARY SCHOOL,
POST PAYYANNUR, KANNUR), KANNUR DIST.
4. THE DISTRICT EDUCATIONAL OFFICER, KANNUR.
5. DEPUTY DIRECTOR OF EDUCATION, KANNUR.
6. SINDHUMOL,H.S.A. (SS), MUNICIPAL HIGHER
SECONDARY SCHOOL, KANDANGALI, PAYYANNUR, KANNUR DIST.
7. JAMEELA AKKALATH, H.S.A. (MATHS), MUNICIPAL HIGHER
SECONDARY SCHOOL,KANDANGALI, PAYYANNUR, KANNUR DIST.

BY ADV. SRI.KRB.KAIMAL
SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN
GOVERNMENT PLEADER SRI.A.J.VARGHESE
SRI.M.SASINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- Ext.P1: True copy of the memo dated 5.7.2006.
- Ext.P2: True copy of the additional memo dated 25.7.2006.
- Ext.P3: True copy of the letter dated 8.8.2006 issued by the 3rd respondent.
- Ext.P4: True copy of the letter dated 18.8.2006 issued by the 3rd respondent.
- Ext.P5: True copy of the letter dated 24.8.06.
- Ext.P6: True copy of the staff fixation order dated 7.10.2005.
- Ext.P7: True copy of the staff fixation order dated 31.7.2006.
- Ext.P8: True copy of the representation dated 24.8.2006.
- Ext.P9: True copy of the disability certificate of respondent no.7.
- Ext.P10: True copy of the appeal filed by the manager.
- Ext.P11: True copy of the request of the Manager.

RESPONDENT'S EXHIBITS:

- Ext.R6(a): True copy of the relevant portion of Rank list of has (SS) dated 30.8.2005 issued by the PSC.
- Ext.R6(b): True copy of the Advise Memo No.CI/3/3398/3 dated 7.10.2005 issued by the PSC to the 6th respondent.
- Ext.R6(c): True copy of the letter No.DR 4(3)49793/05/GW dated 1.2.2006 of the PSC to the 6th respondent.
- Ext.R6(d): True copy of the advise memo no.C.I(3)3398/01/1 dated 25.7.2006 issued by the PSC to the 6th respondent.
- Ext.R6(e): True copy of the judgment of this Hon'ble Court in W.P.(C) No.19230/06 dated 16.8.2006.
- Ext.R7(a): True copy of Government order G.O.(P)No.403/02/G.Edn.dated Thiruvananthapuram 4.12.2006.

// True copy //

P.A. To judge

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A.K.BASHEER, J.

W.P.(C)No.23700 OF 2006

Dated this the 5th day of June, 2007

JUDGMENT

Petitioner is a High School Assistant (Social Studies). He is now working in Municipal Higher Secondary School Kandangali in Payyannur, on the advice issued by the Kerala Public Service Commission. He has preferred this writ petition when faced with the threat of retrenchment subsequent to Ext.P7 fixation of establishment order for the academic year 2006-2007.

2. The grievance of the petitioner appears to be that respondent no.7 has been allowed to continue in the school by effecting category change from H.S.A. (Maths) to H.S.A. (Social Science). It is the case of the petitioner that respondent no.7 who is admittedly H.S.A. (Maths) could not have been allowed to continue against a vacancy which is earmarked for H.S.A. (Social Studies), even going by Ext.P7 order. Petitioner has also relied heavily on Ext.R7(a) [G.O.(P) 403/02/G.Edn. dated 4.12.2002] in this connection.

Respondent no.6 who is working in the same school as H.S.A. (Social Studies), is also caught in the crossfire, though no relief has been sought by the petitioner against her. Petitioner contends that respondent no.6 has been impleaded since if ultimately the question of seniority arises, it may have to be decided as to whether it is the petitioner or respondent no.6 who is to be retrenched first. Anyhow, that issue has lost significance in view of the intervening developments.

3. In the counter affidavit filed by the Manager of the school, it is stated that one vacancy of H.S.A. (Maths) is due to arise with effect from July 1, 2007 on the retirement of Sri.K.Gopinathan, H.S.A. (Maths). In that eventuality, petitioner and respondent no.7 would be able to continue in the school subject to the fixation of staff order to be issued after July 15, 2007, it is submitted.

4. It is brought to my notice that Ext.P7 order was unsuccessfully challenged by the Manager before the Deputy Director of Education. Learned counsel for the petitioner submits that the petitioner intends to challenge Ext.P7 order

in a revision petition before the Director of Public Instruction as provided under Rule 10 (E) of Chapter XXIII KER. He further submits that in view of the intervening developments it may not be necessary at this stage to consider the question whether the cadre change allowed in Ext.P7 was legally valid or sustainable. Learned counsel for the Manager as well as respondent no.7 also agree that such a course may be expedient in the facts and circumstances of the case, particularly for the reason that both petitioner and respondent no.7 are likely to get accommodated in the changed scenario.

5. In the above facts and circumstances, the writ petition is disposed of with the following directions:

(a) Petitioner may prefer a revision petition before the Director of Public Instruction, if so advised, within two weeks from the date of receipt of a copy of this judgment. If such a revision petition is received, the Director shall entertain the same ignoring the delay.

(b) Director shall take a decision on the revision petition on its merit and in accordance with law as

expeditiously as possible, at any rate, within two months from the date of receipt of the same.

(c) The Director shall ensure that the petitioner, the manager, respondents 6 and 7 and all others who are likely to be affected by any order that may be passed, are afforded sufficient opportunity to be heard before any decision is taken in the matter.

(d) The interim order passed by this court on September 1, 2006 shall remain in force. In other words petitioner shall be allowed to continue in the school subject to the staff fixation order for the academic year 2007-08.

Writ petition is disposed of as above.

A.K.BASHEER, JUDGE

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